Supreme Court, U.S.
FILED
AUG 21 1971
ROBERT SEAVER, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

No. 71-2671

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

MIGUEL A. GARGALLO, Petitioner,

v.

TECLA GARGALLO, Respondent.

MIGUEL A. GARGALLO
1350 Dublin Rd., Apt. 27
Columbus, Ohio 43215

Petitioner, Pro Se

August 21, 1971

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

No. _____

MIGUEL A. GARGALLO, Petitioner,

v.

TECLA GARGALLO, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

The petitioner Miguel A. Gargallo respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Ohio, entered in this proceeding on February 17, 1971.

OPINIONS BELOW

The opinion of the Supreme Court of Ohio and that of the Court of Appeals for Franklin County, not reported to date, appear in the Appendix hereto.

JURISDICTION

On May 13, 1970, the Court of Appeals for Franklin County, Ohio, entered the judgment - the decisions were rendered on March 10 and April 7, 1970 - dismissing the petitioner's appeal from trial court orders on contempt proceedings, and dismissing a timely motion for reconsideration.

Thereafter, on February 17, 1971, the Supreme Court of Ohio sua sponte dismissed an appeal as of right from the Court of Appeals for Franklin County. A timely motion for rehearing was denied on March 24, 1971.

Mr. Justice Stewart signed an order extending the time for filing this petition for certiorari to and including August 21, 1971.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

QUESTIONS PRESENTED

1. Whether completion of service of a jail sentence for contempt, arising from failure to pay a money judgment, does moot an appeal.
2. Whether a judgment of mootness can be rendered, on appeal, when the trial court, by statutory law, retains continuing jurisdiction of the case.
3. Whether the rendering of a judgment of mootness by an appellate court does have the effect of depriving the trial court of further jurisdiction of the case.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution:

Article III, Section 2

The judicial power shall extend to all cases, in law and equity, and to controversies.

Article IV, Section 1

Full faith and credit shall be given to the public acts, records, and judicial proceedings.

Fourteenth Amendment, Section 1

No state shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On September 10, 1969, the trial court entered a judgment [A. 1] in a divorce case, ordering (a) that the petitioner (therein referred to as the Defendant) is found to be in contempt of the court's order regarding the mortgage payments for which he is in arrears in the amount of $1,308.00; (b) that the petitioner is thereby given seven (7) days within which to purge himself; and (3) that the petitioner shall appear in court on the day of September 12, 1969, at 11:30 A.M.

Then on September 12, 1969, the petitioner filed a Motion and Exceptions [A. 2-3] from the judgment of September 10, 1969, *supra*, moving the court for an order dismissing all contempt proceedings.

Later, at the hearing held on September 12, 1969 [A. 4-6], as ordered by the court, the trial court found that the petitioner had made no attempt to pay the mortgage (in the first two days from the seven ordered by the court) and ordered him immediately committed to jail for a period of ten days "unless he purges himself" (during the remaining five days, while being in jail for ten days). Relevant facts are that

the court did not call the petitioner to testify, did not ask the petitioner whether he has something to say before pronouncing the sentence, denied a request of petitioner, made through his attorney, to say something before the pronouncement of the sentence, [A. 5] and called a Deputy Sheriff to take the petitioner directly from the courtroom to the county jail.

Thereafter, the petitioner appealed to the Court of Appeals for Franklin County, Ohio. The respondent (therein referred to as Plaintiff-Appellee) alleged, in her Answer Brief [pp. 3-4] that the issues were moot. The Court of Appeals, contrary to its Rules and the expectation of petitioner, permitted no oral argument in this appeal, and in a surprised decision dismissed the appeal [A. 7] on the ground that the petitioner "failed to avail himself of obtaining a stay order during pendency of his appeal and has thereby waived any error", and that in appearing that he "has gone to jail and served his time for contempt", "the question raised by [the] appeal [was] moot."

Thereafter, the petitioner appealed to the Supreme Court of Ohio, which, in turn, by order sua sponte dismissed the appeal "for the reason that no substantial constitutional question" was involved [A. 12].

Petitioner now invokes the jurisdiction of this Court to issue a writ of certiorari to review and reverse the judgments below.

THE FEDERAL QUESTION -- THE DOCTRINE OF MOOTNESS -- WAS TIMELY AND PROPERLY RAISED

The respondent herself introduced the question of mootness defensively in her Answer Brief [pp. 3-4] filed in the Court of Appeals. The petitioner rebutted the contention of mootness in his Reply Brief [p. 2]. The Court of Appeals ruled upon this federal question holding that the appeal was moot.

Thereafter, in his Memorandum in Support of Jurisdiction, [pp. 2-7] filed in the Supreme Court of Ohio, petitioner alleged extensively that the appeal was not moot. Nevertheless, the Supreme Court of Ohio dismissed the appeal on the ground that "no substantial constitutional question" was involved, and later denied a timely motion for rehearing.

This attitude of respondent and the way in which the courts below passed upon the question of mootness eliminate apparently a consideration on when and how the federal question was raised by the petitioner.

REASONS FOR GRANTING THE WRIT

1. THE DECISIONS BELOW APPEAR TO BE NOT IN ACCORD WITH APPLICABLE DECISIONS OF THIS COURT AS TO THE PROPER INTERPRETATION OF THE FEDERAL DOCTRINE OF MOOTNESS, UNDER THE UNITED STATES CONSTITUTION, ARTICLE III, SECTION 2, AND CALLS FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWERS.

In the case of *Liner* v. *Jafco, Inc.*, 375 U.S. 301, 304 (1964), this Court held that "the question of mootness is itself a question of federal law." See also *Love* v. *Griffith*, 266 U.S. 32, 34 (1924). In the case of *Marshand* v. *Director U. S. Probation Office*, 421 F.2d 331 (1970), it was held that the doctrine of mootness is derived from Constitution, Article III, Section 2.

This Court has heard, in recent years, many cases in which the sentences have been fully served, thus indicating that the serving of a sentence completely does not render an appeal moot, otherwise this Court would have been precluded from doing so due to the jurisdictional limitations imposed by the Constitution, Article III, Section 2 ["cases", "controversies"].

In the case at bar, a divorce action, with children of the parties, the trial court by statutory law retains "continuing jurisdiction", and thus a judgment of mootness put the petitioner "in continuing" jeopardy, since the underlying question persists and is likely to recur. Otherwise a judgment of mootness by an appellate court may deprive the trial court of further jurisdiction of the case.

The decisions below are in conflict with holdings by this Court in the cases which follows:

Carroll v. *Prince Anne*, 393 U.S. 175, 179 (1968), where it was held that a review is not mooted where the questioned conduct is likely to recur or the "underlying question persists."

Carpenters Union v. *Labor Board*, 341 U.S. 707, 715 (1950), where it was held that a case is not rendered moot when "[t]he underlying dispute . . . has not been shown to have been resolved."

Carafas v. *LaVallee*, 391 U.S. 234, 237 (1968), where it was held that a cause is not moot when disabilities or burdens may flow from petitioner's conviction.

United States v. *W. T. Grant Co.*, D.C.N.Y., 112 F. Supp. 336 (1952), affirmed 73 S. CT. 894, 345 U.S. 629, where it was held that "[t]o disarm a court it must appear that there is no reasonable expectation that the wrong will be repeated." Similarly, in *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 448 (1945) (Judge Learned Hand).

Sibron v. *New York*, 392 U.S. 40, 57 (1968), where it was held that a criminal case becomes moot by the full service of the prison sentence "only if it is shown" that there is no possibility that any collateral legal consequence will be imposed on the basis of the challenged conviction. Similarly, in *Ginsberg* v. *New York*, 390 U.S. 629, 633-634, n. 2 (1968); *St. Pierre* v. *United States*, 319 U.S. 41 (1943); *Thompson* v. *Louisville*, 362 U.S. 199, 202, (1960).

Morgan v. *United States*, 346 U.S. 502, 512-513 (1954), where it was held that "the results of the conviction may persists. Subsequent convictions may carry heavy burdens, civil rights may be affected."

A jail sentence, as in the case at bar, imposes on the petitioner both extra-legal collateral consequences, such as loss of economic and social opportunities and injury to his reputation, as well as legal collateral ones growing out of the statutory provisions of "continuing jurisdiction" of the trial court in divorce cases [Ohio Revised Code, Section 3105.06.1 and Civil Rule 75 (J)], the loss of civil rights, and the possibility of being challenged as a juror.

If a state in fact conceives of itself as having no interest in maintaining such a conviction, then it is difficult to see how erasure of the conviction is in any sense improper. If, as is more likely, the state considers itself to have an interest in maintaining the status of the petitioner as ex-convict, then it is not unfair to require it to litigate its conviction when it is duly challenged.

2. THE FEDERAL QUESTIONS RAISED IN THIS PETITION FOR CERTIORARI ARE OF GREAT PUBLIC IMPORTANCE AND CONCERN.

The decisions below both mulct the petitioner by their *res judicata* effects and threaten the public by their *stare decisis* effects, under the continuum-of-the-law or law-of-the-case doctrine. Constitution, Article IV, Section 1 ("full faith and credit").

The petitioner can be incarcerated again under the same frivolous charges, since the trial court retains continuing jurisdiction. An attempt on this respect has already been made. See respondent's Answer Brief [p. 5] filed January 14, 1970, with the Clerk of the Court of Appeals for Franklin County.

The magnitude of the Damoclean threat to the public is conspicuously shown by the number of divorce cases filed. In the County of Franklin alone, having jurisdiction of this matter, there were six thousand two hundred and eighty-four (6284) divorce suits filed in 1970.

Denial of certiorari will lead people to believe that this Court is approving the principle upheld in the decisions below. A line rationally drawn in these proceedings is needed to prevent breeding uncertainty and undermining the public confidence in the judicial system and the law.

We believe that this Court should note jurisdiction so that the central question be fully briefed, argued, and decided.

The doctrine of mootness is of such importance that this Court has ruled on it many times, in recent years, in criminal cases. A ruling on mootness, in divorce cases, appears to be needed at this time.

3. THE COURTS BELOW ERRED AND RAISED SIGNIFICANT PROBLEMS

The petitioner was incarcerated under frivolous charges. By decree appearing to have been entered on June 13, 1969, as the record now shows, the respondent, not the petitioner, was supposed to make the mortgage payments. The courts below denied the right of the "equal protection of the law" and the "due process" to this petitioner.

The trial court after finding the petitioner in contempt,

gave him seven days to purge himself. The order was filed September 10, 1969, and the petitioner was notified the following day. One day later, on September 12, 1969, the court found that the petitioner had not complied with the order and send him directly to jail, without permitting him to say a single word in his defense.

On appeal, the respondent confessed her error when she alleged that the question, a money payment to a bank, was moot. [Answer Brief, pp. 3-4]. In fact, "[a] case is moot when a party has no legal interest in the outcome." 103 U. Pa. L. Rev. 772, 774 (1955).

The appellate court ruled that petitioner waived his rights and that the appeal was moot. There is no basis in fact for the contention that the petitioner waived his appeal, for the thing done - - serving a jail sentence of ten days fully - - bears no inconsistent relation to the thing to be done - - to appeal - -, so there is no factually an election. Serving a sentence involuntarily does not indicate acquiescence in the judgment.

The decisions below, grounded on mootness, deprives the trial court of further jurisdiction. *Walling* v. *Shenandoah-Dives Mining Co.*, 134 F.2d 395, 396-397 (1943); *Singleton* v. *Board of Commissioners of State Institutions*, C.A. Fla. 356 F. 2d 771 (1966).

If the Supreme Court of Ohio erred in its ruling on this substantial federal question, then it is probable that the ruling can be reversed. What if it didn't error? Then the Supreme Court of Ohio should have reversed the Court of Appeals' decision (dismissing the petitioner's appeal) and dismissed the complaint of respondent (demanding that the petitioner make a money payment to a bank). In fact, if the question raised by the appeal was moot - - as the Supreme Court of Ohio affirmed by dismissing the appeal as of right - - then there was no controversy between the parties and hence the complaint was frivolous.

It appears that the decisions below enchain the judicial process in a limbo of chaos and aberration. The review by this Court reversing these decisions is in line with securing the blessings of liberty to the people of the country.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment of the Supreme Court of Ohio.

Respectfully submitted,

MIGUEL A. GARGALLO
1350 Dublin Rd., Apt. 27
Columbus, Ohio 43215
Petitioner, Pro Se

August , 1971

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

No. _____

MIGUEL A. GARGALLO, Petitioner

v.

TECLA GARGALLO, Respondent

AFFIDAVIT OF SERVICE

STATE OF OHIO
COUNTY OF FRANKLIN
CITY OF COLUMBUS ; SS:

Miguel A. Gargallo, being first duly sworn, deposes and says that on this _____day of August, 1971, three copies of the Petition for Writ of Certiorari were served by U.S. certified mail, postage prepaid, to Paul Scott, 8 East Broad Street, Columbus, Ohio 43215, Counsel for the respondent. Affiant further says that all parties required to be served have been served.

MIGUEL A. GARGALLO
1350 Dublin Rd., Apt. 27
Columbus, Ohio 43215
Petitioner, Pro Se

Sworn to before me and subscribed in my presence this _____day of August, 1971.

NOTARY PUBLIC

APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

No. _____

MIGUEL A. GARGALLO, Petitioner

v.

TECLA GARGALLO, Respondent

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IN THE COURT OF COMMON PLEAS OF
FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS

TECLA GARGALLO, Plaintiff

-vs- Case No. 136,865

MIGUEL A. GARGALLO, [Defendant]

Filed: September 10, 1969

ENTRY

This cause coming on to be heard on an order to require the Defendent to show cause why he should not be punished as and for contempt of this Court's previous Order regarding the mortgage payments required of him to be made, and the Court being advised in the premises by the sworn testimony of both parties in open Court, the Court finds that the Defendant has failed to show cause as aforesaid.

It is, therefore, ORDERED, ADJUDGED and DECREED that the Defendant is found to be in contempt of this Court's said Order; that he is in arrears as of the date of said hearing, September 5, 1969, in the amount of $1,308.00, that he is given seven (7) days within which to purge himself of the said contempt of Court and he shall appear on the 12th day of September, 1969, at 11:30 o'clock a.m. in this said Court and if he shall appear that he has failed to purge himself of contempt of Court at said time and date, then the Defendant shall be punished by this said Court.

To all of which Defendant excepts.

s/ ROSE
JUDGE

Approved

PHILIP R. BRADLEY
Attorney for Plaintiff

THOMAS O. MILLER
Attorney for Defendant

Franklin County, Ohio, Common Pleas Court
Division of Domestic Relations

Teela Gargallo, Plaintiff

-vs-

No. 136865

Miguel Gargallo, Defendant.

Filed: September 12, 1969

Motion and Exceptions

Defendant's Affidavit of 9-12-69 and its attached Summaries are incorporated herein by reference.

Defendant moves the Court for an order dismissing all contempt proceedings against him, and excepts to all orders finding him in contempt, on the following grounds:

1. The purported order claimed violated is of no effect because good cause was not shown for it.
2. The purported order claimed violated is of no effect because it was not supported by satisfactory proof.
3. The purported order claimed violated is of no effect because there was no lawful hearing pertaining to it.
4. Defendant was and is able to pay only so much of the purported order as he has done.
5. The purported order claimed violated is of no effect because the child 14 years of age or more was not advised of her rights to choose which parent she would prefer to live with.
6. At an earlier date contempt proceedings involving the same charges as in the present proceedings were dismissed in Defendant's favor.
7. Defendant has not been proven guilty beyond a reasonable doubt.
8. A jail sentence was the alternative if Defendant did not purge himself of the claimed contempt, but there is no evidence of willfulness on Defendant's part, which is necessary to support a jail sentence.
9. A jail sentence was the alternative if Defendant did not purge himself of the claimed contempt, but the order calls for the making of payments on a mortgage to a third person in lieu of alimony and one may not be jailed for debt.

Defendant reserves the right to assert all other defenses that may be available to him.

Respectfully submitted,

THOMAS O. MILLER
Attorney for Defendant

Memorandum

We recall to the Court's attention the objections made at the hearing and the evidence of the hearing. We call to the Court's attention the incorporated Affidavit and its attached Summaries.

We call to the Court's attention the attached Salary and Expense Summary, incorporating it by reference in this Memorandum. Defendant could not and cannot pay. Were it not for loans he could not have done that which he has done. His situation deteriorates.

Respectfully submitted,

THOMAS O. MILLER
Attorney for Defendant

IN THE COURT OF COMMON PLEAS
OF FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS

Tecla Gargallo, Plaintiff,

vs. No. 136865

Miguel A. Gargallo, Defendant.

PROCEEDINGS

Before Honorable Clayton W. Rose, Judge, on Friday, September 12, 1969.

APPEARANCES:

Mr. Robert P. DiRosario,
On behalf of the Plaintiff.

Mr. Thomas O. Miller,
On behalf of the Defendant.

Friday Morning Session, September 12, 1969.

THE COURT: I made an order last week.

MR. DiROSARIO: That's right.

THE COURT: I found the defendant guilty of contempt and ordered him to purge himself by making up the payments by today.

MR. DiROSARIO: That's the only purpose we are here for.

THE COURT: That's why we're here to see if he has made the payments.

MR. MILLER: I believe that's correct, Your Honor. We simply reassert the defenses we have had in the past. We will note the motions and affidavit and the memorandum with supporting materials filed today. All these go to prove that the defendant is insolvent, he is unable to meet his obligations as they arise. He's unable to pay anything.

THE COURT: Has he purged himself by paying?

MR. DiROSARIO: He has not.

THE COURT: Then he may go to jail. I found him guilty then and ordered him to purge himself and he did not. He's made no attempt.

MR. MILLER: Note our exceptions, of course, to all of this.

MR. DiROSARIO: I feel the Court was more than fair at the last hearing by giving him more time.

THE COURT: I gave him one week. There's apparently no attempt whatsoever to purge himself. There's no excuse other than he says he can't pay. The Court found he could. He's been paying $60.00 a week and that's all he's been paying.

MR. DiROSARIO: Thank you, Your Honor.

THE COURT: I order him taken to jail, order him committed to jail - - he's been guilty of contempt - - for a period of ten days or until he purges himself.

MR. MILLER: Excuse me, your Honor. Mr. Gargallo would like to say something before you sentence him.

THE COURT: I don't know if he has anything to say. He can say it through you as his attorney.

MR. MILLER: Very well. Note our exceptions to all of this.

THE COURT: You may have five minutes to discuss with him to see if there is any defense. I'm not going to fool with this case any longer.

Back in five minutes.

(Recess taken.)

MR. MILLER: I want to make this further observation, Your Honor, that the sentence, as I understand it, that you have just handed down is that he go to jail for ten days or until he purges himself?

THE COURT: If he purges himself, I will release him from jail.

MR. MILLER: I do not understand that.

THE COURT: He was given one week to purge himself.

MR. MILLER: I'm simply trying to clarify whether it is more or less than ten days.

THE COURT: Ten days.

MR. MILLER: That's the maximum?

THE COURT: If he purges himself, I will consider releasing him.

MR. MILLER: Very well. We understand that. I wanted to make that clear is all.

MR. DiROSARIO: Are we finished now then?

THE COURT: Call the sheriff.

MR. MILLER: Yes; unless I can take him over there.

THE COURT: Well, I prefer the sheriff take him over.

MR. MILLER: All right.

MR. DiROSARIO: Is this hearing concluded now?

THE COURT: Not until the sheriff arrives.

MR. DiROSARIO: All right. Thank you, Your Honor.

(Recess taken.)

THE COURT: Have we got a deputy sheriff here?

THE BAILIFF: Yes, I have turned over the sheet to him.

THE COURT: Is so committed to the county jail for a period of ten days unless he purges himself.

MR. MILLER: Could we clarify the ten-day period?

THE COURT: It starts today.

MR. MILLER: Today counts as a day?

THE COURT: I don't know. It is up to them, they figure the days. I also prepared an entry, he's committed to jail for ten days unless he purges himself.

MR. MILLER: Note our exceptions again, please.

THE COURT: You may have your exceptions.

Thereupon, at 12:00 o'clock, Friday, September 12, the hearing was closed.

CERTIFICATE

It is hereby certified that the foregoing is a true and correct transcript of the proceedings in this matter before Honorable Clayton W. Rose, Judge, taken by me and transcribed from my stenographic notes; and that the said transcript has been compared with my stenographic notes.

Armstrong & Okey

By

LeAnn Appel, Court Reporter.

IN THE COURT OF APPEALS OF
FRANKLIN COUNTY, OHIO

Teela Gargallo, Plaintiff-Appellee,

vs.

No. 9654

Miguel Gargallo, Defendant-Appellant.

Filed: March 10, 1970

DECISION

Rendered on March 10, 1970

TYACK, SCOTT & COLLEY,
MR. PAUL SCOTT,
8 East Broad Street
Columbus, Ohio,
For Plaintiff-Appellee.

MR. THOMAS O. MILLER,
344 South High Street,
Columbus, Ohio,
For Defendant-Appellant,
and

MR. MIGUEL GARGALLO,
1350 Dublin Rd.,
Columbus, Ohio,
Per se.

PER CURIAM.

This is an appeal from contempt proceedings against defendant by the Franklin County Common Pleas Court, Division of Domestic Relations. The court ordered defendant committed to jail for ten days or until he earlier purged himself for failure to make certain payments.

Defendant failed to avail himself of obtaining a stay order during pendency of his appeal and has thereby waived any error which might have attached to the original order.

It appearing that defendant has gone to jail and served his time for contempt, the court finds that the question raised by this appeal is moot. Appeal is dismissed.

Appeal dismissed.

STRAUSBAUGH, HOLMES and STERN, J.J., concur.

Franklin County, Ohio, Court Of Appeals
Tenth District

Tecla Gargallo, Plaintiff-Appellee

vs. No. 9654

Miguel A. Gargallo, Defendant-Appellant

Filed: March 16, 1970

Application For Reconsideration

Defendant-Appellant hereby applies to the Court for a reconsideration of the Court's Decision rendered in this case on March 10, 1970.

Respectfully submitted,

Thomas O. Miller, Counsel For Appellant

Memorandum

The Decision should be reconsidered for the following reasons:

1. There is nothing in the record to indicate whether or not Defendant attempted to avail himself of a stay order. A stay order is not a requisite of an appeal. A stay order is dependant on a bond to the state. The state may not exact a bond to itself as the costs of an appeal. How could Defendant have given a bond. Such a bond, we believe, is not sold. Even if it were, Defendant could not pay for it. He could not pay his debts or the temporary order. Such assets as he had were all encumbered.

2. The questions raised by this appeal are not moot.

Sibron v. N.Y., 392 U.S. 40 (1968);

Village of Avon v. Popa, 96 Ohio App. 147, 121 N.E. 2d 254 (1953).

In Sibron the court holds and says at page 57 that the rule is

> ". . . a criminal case is moot only if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction."

In Popa it was held that the fact that appellant paid his criminal fine and costs did not waive his appeal or make it moot, relying on a decision of Mr. Justice Holmes from the Massachusetts court. There are legal consequences, not only

collateral but direct, in the present case. Defendant may be tried again for the same contempt.

3. The Court, contrary to its Rules and the expectation of Defendant, permitted no oral argument in this appeal.

Respectfully submitted,

Thomas O. Miller, Counsel For Appellant

Copy mailed to Paul Scott, Esq., Counsel For Appellee, 3-16-70.

IN THE COURT OF APPEALS OF
FRANKLIN COUNTY, OHIO

Tecla Gargallo, Plaintiff-Appellee,

vs.

Miguel Gargallo, Defendant-Appellant.

No. 9654

Filed: April 7, 1970

DECISION
Rendered on April 7, 1970

TYACK, SCOTT & COLLEY,
MR. PAUL SCOTT,
8 East Broad St.,
Columbus, Ohio,
For Plaintiff-Appellee.

MR. THOMAS O. MILLER
344 South High St.
Columbus, Ohio,
For Defendant-Appellant,
and
MR. MIGUEL GARGALLO,
1350 Dublin Rd.,
Columbus, Ohio,
Per se.

PER CURIAM:

Defendant raises no arguments on his present motion that were not considered by this court in its original decision. Motion for reconsideration is overruled.

Motion overruled.

STRAUSBAUGH, HOLMES and STERN, JJ., concur.

IN THE COURT OF APPEALS OF
FRANKLIN COUNTY, OHIO

Tecla Gargallo, Plaintiff-Appellee,

vs. No. 9654

Miguel Gargallo, Defendant-Appellant.

Filed: May 13, 1970

JOURNAL ENTRY

In conformance with the decisions of this court issued on March 10, 1970 and April 7, 1970, it is ordered that this appeal is dismissed and the Motion for reconsideration is overruled. The case is remanded and costs are assessed to the defendant-appellant.

s/ STRAUSBAUGH, HOLMES and STERN
JUDGES

cc: Miguel Gargallo
Thomas O. Miller

THE SUPREME COURT OF THE
STATE OF OHIO

THE STATE OF OHIO,
City of Columbus

Tecla Gargallo, Appellee,

vs. Nos. 70-380 70-381

Miguel A. Gargallo, Appellant.

1971 TERM

To wit: February 17, 1971

MOTIONS FOR AN ORDER DIRECTING
THE COURT OF APPEALS
for FRANKLIN County
TO CERTIFY ITS RECORDS

It is ordered by the Court that these motions are overruled.

COSTS:

Motion Fee, $40.00, paid by Miguel A. Gargallo

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus
Tecla Gargallo, Appellee,
vs. Nos. 70-380 70-381
Miguel A. Gargallo, Appellant.

1971 TERM

To wit: February 17, 1971

APPEALS FROM THE COURT OF APPEALS
for FRANKLIN County

These causes, here on appeal as of right from the Court of Appeals for FRANKLIN County, were heard in the manner prescribed by law, and, no motion to dismiss such appeals having been filed, the Court sua sponte dismisses the appeals for the reason that no substantial constitutional question exists herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the COMMON PLEAS COURT to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for FRANKLIN County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.